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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TORRES, ALICIA M

ART UNIT PAPER NUMBER

3671

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,747

Applicant(s)

KRETSCH, KEVIN R.

Examiner

Alicia M Torres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-20, 32 and 33 is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-14 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pansini '791 in view of Peterson, as cited by Applicant.

3. In regards to claims 1-7, Pansini '791 discloses a weed control system for a body of water, the system comprising:

A weed contacting member (28, 32) suspendable within the body of water proximate a bed of weeds; and

A drive member (at 47) for moving the weed contacting member (28, 32) in a repeating circular arc pattern over the bed of weeds, the weed contacting member (28, 32) freely hanging down from a support member (11) located at a surface of the body of water such that the weed contacting member (28, 32) repeatedly brushes against any weeds in the bed of weeds, as per claim 1; and

Wherein the weed contacting member (28, 32) is flexibly attached to the support member (11) which is located approximately on or above a surface of the body of water, as per claim 2; and

wherein the drive member (at 47) is reversible and is configured to change a direction of

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movement of the weed contacting member (28, 32) when a predetermined time limit is reached, as per claim 4; and

wherein the drive member (at 47) includes a pair of opposing nozzles (38, 39) which alternately eject a jet of water to drive the drive member (at 47), as per claim 5; and

wherein the support member (11) is at least six feet long and the weed contacting member (28, 32) is disposed along at least a portion of the length of the support member (11), as per claim 7.

However, Pansini '791 fails to disclose wherein the weed contacting member includes an elongate member extending in a parallel direction relative to a length of the support member, as per claim 1; and

Wherein the weed contacting member includes a cross-bar having a plurality of tines extending from a body of the cross-bar, as per claim 3; and

Wherein the weed contacting member includes a plurality of tines disposed along a length of the elongate member and running a perpendicular direction relative to a motion of the weed contacting member, as per claim 6.

Peterson discloses a similar apparatus for aquatic plants wherein the weed contacting member (10) includes an elongate member (12) extending in a parallel direction relative to a length of the support member, as per claim 1; and

Wherein the weed contacting member (10) includes a cross-bar (12) having a plurality of tines (14) extending from a body of the cross-bar (12), as per claim 3; and

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Wherein the weed contacting member (10) includes a plurality of tines (14) disposed along a length of the elongate member (12) and running in a perpendicular direction relative to a motion of the weed contacting member (10), as per claim 6.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the tines of Peterson on the device of Pansini '791 in order to provide an effective raking action.

4. In regards to claim 8, Pansini '791 discloses a weed control system for a body of water, the system comprising:

A weed contacting member (20) including an elongate member (28, 32) suspended from a support member (11); and

Water activated means including a nozzle (38, 39) which emits water to develop thrust for moving the support member (11) and the weed contacting member (20) in a repeating pattern through the body of water such that the weed contacting member (20) repeatedly contacts any weeds in a path of the weed contacting member (20).

However, Pansini '791 fails to disclose wherein the elongate member extends along the support member in a parallel direction relative to a length of the support member.

Peterson discloses a similar apparatus wherein the elongate member (12) would extend along the support in a parallel direction relative to a length of the support member.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the elongate member of Peterson on the device of Pansini '791 in order to provide an effective raking action.

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5. In regards to claims 9-11, Pansini '791 discloses a weed control system for a body of water, the system comprising:

a weed contacting member (28, 32) including an elongate member (28) suspended from a support member (11); and

Wherein the weed contacting member (28, 32) is moved in a repeating pattern through the body of water such that the weed contacting member (28, 32) repeatedly contacts any weeds in a path of the weed contacting member;

wherein water activated means including a nozzle (38) which emits water to develop thrust for moving the weed contacting member (20); and

Wherein water activated means further comprises a second nozzle (39) and a water pump coupled to the nozzle (38) and the second nozzle (39) which open in generally opposite directions from each other and which are alternately activated, as per claim 9; and

Wherein the weed contacting member (20) is suspended from the support member (11) which is rotatably coupled to a stationary unit (14) proximate the body of water and which extends over a surface of the body of water, as per claim 10; and

wherein water activated means (38, 39) automatically changes a direction of movement of the weed contacting member (28, 32) when a predetermined time limit is reached, as per claim 11.

However, Pansini '791 fails to disclose wherein the elongate member extends along the support member in a parallel direction relative to a length of the support member, as per claim 9.

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Peterson discloses a similar apparatus wherein the elongate member (12) would extend along the support in a parallel direction relative to a length of the support member, as per claim 9.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the elongate member of Peterson on the device of Pansini '791 in order to provide an effective raking action.

6. In regards to claims 12-14, Pansini '791 discloses A weed control system for a body of water, the system comprising:

- a support member (11);

- a buoyant member (22) coupled to the support member (11) to keep the support member (11) at or above a surface of the body of water;

- an elongate weed contacting member (28, 32) suspended from the support member (11) to descend beneath the surface of the body of water; and

- a driver (38, 39) to move the support member (11) across the surface of the body of water in a repeating pattern such that the weed contacting member (28, 32) also moves in a repeating pattern and repeatedly brushes against any weeds beneath the support member (11), as per claim 12; and

- wherein the support member (11) includes an elongated pipe having a first end rotatably coupled to a stationary unit (14) proximate the body of water, as per claim 13; and

- wherein the driver (38, 38) includes a water activated driver coupled to the support member (11), as per claim 14.

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However, Pansini '791 fails to disclose wherein the weed contacting member extends parallel relative to a length of the support member, as per claim 12.

Peterson discloses a similar apparatus wherein the elongate member (12) would extend along the support in a parallel direction relative to a length of the support member.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the elongate member of Peterson on the device of Pansini '791 in order to provide an effective raking action.

7. In regard to claims 21-24, Pansini '791 discloses a weed control system for a body of water, the system comprising:

An elongated support member (11) positioned parallel to a surface of a body of water and positionable at or above the surface, the elongated support member (11) having a first end rotatably coupled to a stationary unit (14) proximate the body of water;

An elongate weed contacting member (28, 32) suspended from the support member (11) and located beneath the surface; and

A reversible driver (at 47) coupled proximate a second end of the elongated support member (11) to drive the elongated support member (11) in a rotating manner repeatedly back and forth across the surface of a section of the body of water such that the weed contacting member (28, 32) is repeatedly pulled back and forth beneath the surface of the section to repeatedly contact any weeds located in that section, as per claim 21; and

Wherein the reversible driver (at 47) is water activated, as per claim 22; and

Wherein the reversible driver (at 47) is motor driven, as per claim 24.

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However, Pansini '791 fails to disclose wherein the elongate weed contacting member extends parallel relative to a length of the support member, as per claim 21; and

Wherein the weed contacting member includes a cross-bar having a plurality of tines extending from a body of the cross-bar, as per claim 23.

Peterson discloses a similar apparatus wherein the elongate member (12) would extend along the support in a parallel direction relative to a length of the support member, as per claim 21; and

Wherein the weed contacting member (10) includes a cross-bar (12) having a plurality of tines (14) extending from the body of the cross-bar (12), as per claim 23.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the elongate member of Peterson on the device of Pansini '791 in order to provide an effective raking action.

8. Claims 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pansini '791 in view of Majkrzak.

In regard to claims 25 and 26, Pansini '791 discloses a device wherein the following method of controlling weeds in a body of water is inherent, the method comprising repeatedly brushing a bed of weeds with a weed contacting member (28, 32) which is suspended and freely hanging down from a support member (11) located proximate a surface of the body of water, as per claim 25; and

Wherein repeatedly brushing includes periodically reversing a direction of the weed contacting member (28, 32) in response to a timer (the regulating mechanism that rotates ring 40,

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see column 3, lines 40-49) such that the weed contacting member (28, 32) moves back and forth over the bed of weeds, as per claim 26; and

Wherein it appears the weed contacting member would be moved through the body of water with a thrust of between 1 lb. and 7lbs., as per claim 30.

However, Pansini '791 fails to disclose wherein the body of water is a lake or river.

Majkrzak discloses a similar rotating aquatic weed device for use in a lake or river.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the device of Pansini '791 in a lake or river as taught by Marjkrzak in order to prevent interference with recreation such as swimming and boating.

9. In regards to claims 27-29, Pansini '791 discloses a method of controlling weeds in a body of water, the method comprising:

coupling a first end of a support member (11) to a stationary unit (14) proximate the body of water such that the support member (11) extends over a surface of the body of water;

suspending a weed contacting member (28, 32) from the support member (11) such that the weed contacting member (28, 32) is located beneath the surface; and

moving the support member (11) in a repeating circular arc pattern such that the weed contacting member (28, 32) repeatedly brushes against any weeds located proximate the weed contacting member to disintegrate the weeds, as per claim 27; and

wherein the weed contacting member (28, 32) momentarily and lightly contacts any weeds proximate the weed contacting member (28, 32), as per claim 28; and

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wherein the weed contacting member (28, 32) does not pull any weeds up onto a shore of the body of water, as per claim 29.

However, Pansini '791 fails to disclose wherein the body of water is a lake or river.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the device of Pansini '791 in a lake or river as taught by Majkrzak in order to prevent interference with recreation such as swimming and boating.

10. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pansini '791 and Majkrzak as applied to claim 25 above, and further in view of Lubins.

The method is disclosed as applied a to claim 25 above. However, Pansini '791 and Majkrzak fail to disclose a user varying the height of the weed contacting member relative to the support member.

Lubins discloses a similar aquatic device wherein a user can vary the height of the weed contacting member (11) relative to the support member (unnumbered pontoons).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the variable height of Lubins on the device of Pansini '791 and Majkrzak in order to provide a uniform height of weed control.

Response to Arguments

11. Applicant's arguments with respect to claims 1-14 and 21-24 have been considered but are moot in view of the new ground(s) of rejection.

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12. In response to applicant's argument that Pansini '791 fails to anticipate the weed contacting member amended for use in a lake or river, as per claims 25-31, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Allowable Subject Matter

13. Claims 15-20, 32 and 33 are allowed.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

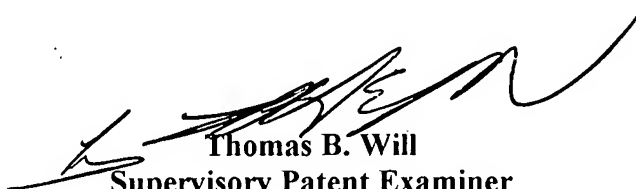
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT
October 15, 2004.